DEPT. OF TRANSPORTATION

BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (73 -2 A 9:55

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In the Matter of:)
) Docket No. FMCSA-2008-0091
ADLR Transportation, Inc.) CA-2007-0716-US1061
) (Western Service Center)
Respondent.)
-)
)

FIELD ADMINISTRATOR'S MOTION FOR ORDER OF DEFAULT AND MEMORANDUM OF LAW IN SUPPORT

COMES NOW, the Field Administrator for the U.S. Department of Transportation, Federal Motor Carrier Safety Administration ("FMCSA"), Western Service Center by and through the undersigned, and hereby moves the Assistant Administrator for entry of an Order of Default determining the response to the Notice of Claim to be inadequate pursuant to 49 C.F.R. § 386.14 and declaring the Notice of Claim, including the civil penalty asserted in the Notice of Claim, to be the Final Agency Order in the above captioned civil penalty proceeding. In support thereof, the Field Administrator states as follows:

I. **INTRODUCTION**

This civil penalty proceeding was commenced through the issuance of a Notice of Claim, on January 10, 2008, pursuant to 49 C.F.R. Part 386. The Notice of Claim was

based on violations discovered during a compliance review of ADLR Transportation, Inc. ("ADLR Transportation" or "Respondent") completed on or about November 28, 2007. The Notice of Claim charged Respondent with three violations of 49 C.F.R. § 392.301(a), using a driver before the motor carrier has received a negative pre-employment controlled substance test result; and seven (7) violations of 49 C.F.R. § 395.8(e), false reports of records of duty status. The Notice of Claim proposed a civil penalty of \$9,330 for the charged violations. A copy of the Notice of Claim is attached hereto and identified as Attachment A.

Respondent served a response to the Notice of Claim on the Division

Administrator for the California Division on or about February 5, 2008. A copy of the response is attached hereto and identified as Attachment B. In its response Respondent states that it "would like to contest the violations stating that we were unknowingly violating Federal Motor Carrier regulations on all counts as we are a newly formed corporation that grew very rapidly in a very short time with untrained personnel".

Respondent further states "[i]t is our desire to request a reduction for the civil penalties that were incurred". In its response Respondent tacitly admits the violations charged, and does not challenge the calculation of the penalty asserted in the Notice of Claim.

Respondent did not pay the penalty asserted in the Notice of Claim, request arbitration, or request any form of administrative adjudication of the claim.

II. BACKGROUND AND JURISDICTION

Respondent is a for-hire carrier transporting general freight in interstate commerce by means of commercial motor vehicle, and is subject to the jurisdiction of the

Secretary of Transportation, and the FMCSA Administrator, pursuant to 49 U.S.C. § 13501. Jurisdiction over Respondent is established by the nature of the interstate movement and by the use of a commercial motor vehicle to effect such movement.

Respondent filed its OP-1 application and Motor Carrier Safety Report (MCS-150) on-line on or about January 5, 2005. A new entrant safety audit was completed of ADLR Transportation on January 24, 2006. On or about November 28, 2007, a compliance review was completed of Respondent. The compliance review was initiated due to the carrier's SafeStat B status and involvement in a fatality crash on September 26, 2007 in Arizona. During the compliance review, the investigator discovered violations of Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations (FMCSRs).

III. MOTION FOR ORDER OF DEFAULT

A. Applicable Regulations

Under the Rules of Practice effective November 15, 2005, a respondent must reply to the Notice of Claim choosing one of the following three options: 1) paying the full amount of the civil penalty asserted in the Notice of Claim; 2) contesting the claim by requesting administrative adjudication; or 3) seeking binding arbitration. *See* 49 C.F.R. § 386.14(b). Further, the revised Rules of Practice provide that a reply must state the grounds for contesting the claim, and raise any affirmative defenses the respondent intends to assert. Specifically, the reply must admit or deny each separately stated and numbered allegation of violation in the claim, include all known affirmative defenses, and must state which of the specified options Respondent seeks for administrative

adjudication. See 49 C.F.R. § 386.14(d)(1). A mere general denial of the claim is insufficient and may result in a default being entered. *Id.* A default causes the Notice of Claim, including the penalty asserted in the Notice of Claim, to become the Final Order in the proceeding. See 49 C.F.R. § 386.14(c)(1).

B. Argument

1. The violations charged in the Notice of Claim are admitted; the Field Administrator is entitled to Final Order as to the charged violations.

The Rules of Practice provide that "[a]ny allegation not specifically denied is deemed admitted." See 49 C.F.R. § 386.14(d)(1)(i). Respondent in its response to the Notice of Claim does not deny the charged violations. The Field Administrator is entitled to Final Order as to the charged violations. See Executive Express Trucking, Inc., Docket No. FHWA-1997-2499 (Final Order, September 14, 1999) citing In the Matter of Lakeview Farms, Inc., Docket No. R3-91-157, 58 Fed. Reg. 62481, 63482 (Final Order, February 8, 1993).

2. Default is appropriate where Respondent's response to the Notice of Claim failed to comply with the requirements of the Rules of Practice.

The Notice of Claim notified Respondent of the requirements for a reply, as well as the consequences for failure to file an adequate reply. On pages 3-5, the Notice of Claim provided Respondent information on how to reply to the Notice of Claim:

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is

attached to this Notice of Claim for your information. . . . You may pursue the following courses of action:

- (1) PAYMENT OF PENALTY: Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. . . . An Enforcement Specialist can be reached at (303) 407-2350. . .
- (2) REOUEST FOR ADMINISTRATIVE ADJUDICATION: You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty(30) days after service of this Notice of Claim. You Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1)(iii). . . . (3) REQUEST FOR BINDING ARBITRATION: If you dispute only the amount of civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply.

The Notice of Claim served January 10, 2008 also clearly informed Respondent of the potential consequences, under the Rules of Practice, if Respondent failed to comply with the regulatory requirements for a reply, stating in pertinent part:

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE **EXACT** MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. . . . A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

It is well settled that default is appropriate where the response to a Notice of Claim fails to comply with the Rules of Practice requirements for a reply. *See In the*

Matter of Blue Mack Transport, Inc., Docket No. FHWA-1997-2398 (Order, October 8, 1999). In the instant case, Respondent's response to the Notice of Claim failed to comply with the requirements for a reply. Respondent, in its response, did not pay the asserted penalty, request any form of administrative adjudication, or request binding arbitration. Further, Respondent in its response, did not set forth any challenge to the calculation of, or grounds for disputing, the proposed penalty, or include any affirmative defenses. Because Respondent's statements in its response to the Notice of Claim did not comply with the regulatory requirements for a reply, its response was not a reply, and no reply was received. See Blue Mack, supra. Once a respondent has admitted, or failed to deny, a violation or violations for which it is charged and failed to contest the calculation of the proposed penalty, it should either pay the full amount of the civil penalty, or seek binding arbitration on the amount of the civil penalty and/or length of time in which to pay the penalty. Because Respondent chose none of the above, a finding of default is appropriate. See In the Matter of Archie Palmer, Docket No. FMCSA-2007-26787 (Final Order, May 11, 2007).

In the Blue Mack decision, the Assistant Administrator cites to several previous decisions: In the Matter of Spring Lake Farm Transportation, Inc., Docket No. FHWA-1997-2469, (Order, September 13, 1999), at 3; In the Matter of J.B. Hunt Transport, Inc., Docket No. FHWA-1998-3578, (Decision on Review, August 18, 1999), at 3; In the Matter of Carolina Carbajal dba Border Transportation, Inc., Docket No. FHWA-1997-2566, (Order On Reconsideration, May 28, 1999), at 2-3; In the Matter of Carolina Carbajal dba Border Transportation, Inc., Docket No. FHWA-1997-2566, (Order, January 19, 1999), at 2-3; In the Matter of Spirit Express of WNY, Inc., Docket No. FHWA-1997-2380, (Final Order, June 2, 1998), at 4-5; In the Matter of LAR-NO Trucking, Inc., Docket No. FHWA-1997-2511, (Final Order, November 3, 1997), at 2-3; In the Matter of Arctic Express, Inc., Docket No. FHWA-1997-2519, (Order Modifying "Order Appointing Administrative Law Judge," January 20, 1998), at 5.

Respondent has admitted the charged violations, not challenged the penalty calculation, not submitted any argument or evidence to call the penalty calculation into question, nor stated any grounds for disputing the charged violations or asserted penalty. In its response, Respondent only states "[i]t is our desire to request a reduction for the civil penalties that were incurred". The essence of a default is a failure on the part of the motor carrier to participate in the proceedings when the motor carrier was required to do so. *See In the Matter of Parcel Shipper's Express, Inc.*, Docket No. FMCSA-2000-9523 (Order, May 25, 2001), at 3. By failing to state any matter it was challenging, or request any form of administrative adjudication or arbitration, Respondent failed to participate in these proceedings as required. No settlement having been reached, Respondent is left with not having properly replied to the Notice of Claim. *See In the Matter of H & H Transport, LLC*, Docket No. FMCSA-2007-27036 (Final Order, May 11, 2007). The only remaining option left available to Respondent should be payment of the penalty set forth in the Notice of Claim.

IV. CONCLUSION

Wherefore, for the foregoing reasons, the Field Administrator respectfully requests the Assistant Administrator find ADLR Transportation to be in default, and enter a Final Order declaring the Notice of Claim, including the penalty asserted, as the Final Agency Order in this civil penalty proceeding.

Respectfully Submitted, Attorneys for the Claimant, Field Administrator

Date: March 31, 2008

By:

Nancy Jackson

Office of Chief Counsel

Federal Motor Carrier Safety Administration 12600 West Colfax Avenue, Suite B-300

Lakewood, Colorado 80215

303-407-2363

303-407-2339 (Fax)

LIST OF ATTACHMENTS In the Matter of ADLR Transportation, Inc. FMCSA-2008-0091

Attachments

Attachment A Notice of Claim

Attachment B Respondent's response to the Notice of Claim

CERTIFICATE OF SERVICE

This is to certify that on the _______ of March 2008, the undersigned served, as specified, the designated number of copies of the foregoing document to each of the parties listed below:

US DOT Dockets	One Copy
Docket Operations	Federal Express
U.S. Department of Transportation	FedEx # 7910 3309 5061
1200 New Jersey, SE	
West Building Ground Floor, Room W12-140	
Washington, DC 20590-0001	
Fatima Hernandez, President	One Copy
ADLR Transportation, Inc.	U.S. Mail
5280 Capella court	First Class
Mira Loma, CA 91752	
Steve Farbman, Adjudications Counsel	One Copy
U.S. Department of Transportation	Federal Express
1200 New Jersey, SE.	FedEx # 7904 8098 4264
Sixth Floor, West Building, Room W61-308	
Washington, DC 20590-0001	
Terry D. Wolf	One Copy
Division Administrator	Internal Mail
Federal Motor Carrier Safety Administration	
1325 J Street, Suite 1540	
Sacramento, CA 95814	
Nancy Jackson	One Copy
Office of Chief Counsel	Internal Mail
Western Service Center	
12600 West Colfax Avenue, Suite B-300	
Lakewood, CO 80215	
William R. Paden	One Copy
Field Administrator	Internal Mail
Federal Motor Carrier Safety Administration	
12600 West Colfax Avenue, Suite B-300	
Lakewood, CO 80215	
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Attachment A



U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Western Service Center

Certified/ Return Receipt Requested

Certified Receipt Number: 7003 1680 0004 3146 6331

January 10, 2008

Fatima Hernandez, President ADLR Transportation Inc 5280 Capella Court Mira Loma, CA 91752 Golden Hills Office Centre 12600 W. Colfax Ave. Suite B-300 Lakewood, CO 80215

Phone: (303) 407-2350 Fax: (303) 407-2339

NOTICE OF CLAIM¹ -- Violations of 49 CFR § 382.301(a); 395.8(e).

CIVIL PENALTY: \$9,330

Case Number: CA-2007-0716-US1061

US DOT Number: 1318654

Dear Ms. Hernandez:

A compliance review was conducted at Mira Loma, CA on November 28, 2007. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against ADLR Transportation Inc for the amount of \$9,330.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit ADLR Transportation Inc from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.

¹⁾ A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

SUMMARY OF VIOLATIONS

Your company is charged with:

1. Three (3) violations of 49 CFR § 382.301(a)- Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.

2. Seven (7) violations of 49 CFR § 395.8(e)- False reports of records of duty status.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

- 1. Do not allow a driver to perform a safety-sensitive function until the driver submits to a preemployment controlled substances test and a negative test result is obtained, in accordance with 49 CFR Part 382.
- 2. Ensure all drivers' records of duty status are accurate. Compare the drivers' records of duty status with other business records in your possession including, but not limited to, toll, fuel, repair, and other on the road expense receipts, as well as invoices, bills of lading, dispatch records, trip reports, and any other document generated by the trip, and driver earnings records, to verify accuracy of duty status record entries. Prohibit falsification of duty status records by any of your drivers.

Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions. Under Section 222 of the Motor Carrier Safety Improvement Act of 1999, recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a six-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to this "Section 222" provision and the maximum penalties have been assessed. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

PENALTY

Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses,

ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 14901 (c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the compliance review, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

	TYPE OF	NUMBER OF	ASSESSMENT	§222
<u>VIOLATION</u>	VIOLATION ²	<u>COUNTS</u>	PER COUNT	APPLIED TOTAL
382.301(a)	NR	3	\$1,430.00	\$4,290.00
395.8(e)	R	7	\$720.00	\$5,040.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$9,330.

HOW TO REPLY TO THE NOTICE OF CLAIM

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

²⁾ CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalty assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commercial Regulations.

(1) PAYMENT OF PENALTY: Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at (303) 407-2350. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at http://safer.fmcsa.dot.gov by selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation Federal Motor Carrier Safety Administration Western Service Center Golden Hills Office Centre 12600 W. Colfax Ave. Suite B-300 Lakewood, CO 80215

Personal or company checks will not be accepted and will be returned.

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

(2) REQUEST FOR ADMINISTRATIVE ADJUDICATION: You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim.

Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1)(iii). Once you select an adjudication option, you are bound by that selection.

You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(3) REQUEST FOR BINDING ARBITRATION: If you dispute only the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through

FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: http://www.fmcsa.dot.gov/. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE <u>EXACT</u> MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,

Terry D. Wolf

Division Administrator

Federal Motor Carrier Safety Administration

Enclosures

APPLICABLE STATUTES

Section 521(b)(2)(A) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 USC §§ 31131 et seq.)(except sections 31138 and 31139) or 49 USC §§ 31301 and 31306, or section 31502 of 49 USC, shall be liable for a civil penalty in an amount not to exceed \$11,000 for each offense. No civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,750 (49 USC § 521(b)(2)(A) and 68 Fed. Reg. 15381 (March 31, 2003)). Section 5123(a) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under chapter 51 shall be liable for a civil penalty in an amount not to exceed \$50,000 (71 FR 8487; February 17, 2006) for each offense. If the violation results in death, serious illness, or severe injury to any person, or in substantial destruction of property, the civil penalty may be increased to not more than \$

105,000 for each offense (72 FR 55102; September 28, 2007).

Section 521(b)(2)(B)(ii) of 49 USC provides for a maximum civil penalty of \$10,000 for anyone who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in a record about an operation or business fact or transaction, or knowingly makes, prepares or preserves a record in violation of a regulation or order of the Secretary, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation. (49 USC § 521(b)(2)(B)(ii); August 10, 2005).

Section 521(b)(2)(B)(i) of 49 USC provides for a maximum civil penalty of \$1,000 for each recordkeeping offense, (including the failure to make a required report; or making a required report that does not specifically, completely, and truthfully answer a required question; or does not make, prepare, or preserve a record in the form and manner prescribed), and each day of the violation shall constitute a separate offense. The maximum of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000 (49 USC § 521(b)(2)(B)(i); August 10, 2005).

STATEMENT OF CHARGES

Violation 1 --- 49 CFR 382.301(a) - Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.

CHARGE #1:

On or about 05/02/2007, ADLR Transportation Inc allowed its driver, Sabel Martinez, to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from Fontana, CA to El Paso, TX, before the carrier received a negative pre-employment controlled substances test result.

CHARGE #2:

On or about 06/02/2007, ADLR Transportation Inc allowed its driver, Gustavo Garcia, to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from Fontana, CA to Cheyenne, WY, before the carrier received a negative pre-employment controlled substances test result.

CHARGE #3:

On or about 09/19/2007, ADLR Transportation Inc allowed its driver, Kim Aragon, to perform a safety-sensitive function in that the driver drove a commercial motor vehicle in commerce from Fontana, CA to Denver, CO, before the carrier received a negative pre-employment controlled substances test result.

Violation 2 --- 49 CFR 395.8(e) - False reports of records of duty status.

CHARGE #1:

On or about 08/27/2007, ADLR Transportation Inc used driver, Gustavo Garcia, to drive a commercial motor vehicle in interstate commerce from Fontana, CA to Tolleson, AZ. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because log book shows driver was off duty all day in Fontana, CA and driver's trip sheet shows that driver performed a trip from Nestle to Smiths Food in Tolleson, AZ. A second log that was completed by the driver shows the driver drove from Fontana, CA to Ehrenberg, AZ on that date.

CHARGE #2:

On or about 08/28/2007, ADLR Transportation Inc used driver, Gustavo Garcia, to drive a commercial motor vehicle in interstate commerce from Ontario, CA to Goodyear, AZ. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because driver's log book shows that driver was off duty all day and in fact, driver's trip sheet shows that driver performed 2 trips on that day.

CHARGE #3:

On or about 08/29/2007, ADLR Transportation Inc used driver, Gustavo Garcia, to drive a commercial motor vehicle in interstate commerce from Fontana, CA to Tucson, AZ. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty

STATEMENT OF CHARGES

status is false because it shows that driver started driving at 11:15AM from Fontana, CA and arrived in Phoenix, AZ at 4:45PM, however, straight bill of lading shows that driver was picking up a load from Nestle Waters in Ontario, CA between 14:55 and 19:00. And driver's trip sheet shows that driver got paid waiting time for pick up #3180137 that was headed from Nestle in Ontario, CA to Sams Club in Tucson, AZ.

CHARGE #4:

On or about 9/4/2007, ADLR Transportation Inc used driver, Gustavo Garcia, to drive a commercial motor vehicle in interstate commerce from Pomona, CA to Denver, CO. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because it shows that driver went off duty at 4:15PM in Fontana, CA after complating a trip from Las Vegas, NV, however, driver's trip sheet shows that driver performed a delivery of Spa from Pomona, CA to Denver, CO.

CHARGE #5:

On or about 9/5/2007, ADLR Transportation Inc used driver, Gustavo Garcia, to drive a commercial motor vehicle in interstate commerce from Pomona, CA to Denver, CO. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because it shows that driver was off duty all day in Fontana, CA and in fact driver performed a trip from Pomona, CA to Denver, CO.

CHARGE #6:

On or about 9/6/2007, ADLR Transportation Inc used driver, Gustavo Garcia, to drive a commercial motor vehicle in interstate commerce from Denver, CO to Albuquerque, NM. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because it shows that driver was off duty the entire day however, driver's trip sheet shows that driver performed a trip from Denver, CO to Albuquerque, NM.

CHARGE #7:

On or about 9/13/2007, ADLR Transportation Inc used driver, Gustavo Garcia, to drive a commercial motor vehicle in interstate commerce from Cabazon, CA to Aurora, CO. The driver made a false report of duty activities on the record of duty status for that date. The driver's record of duty status is false because it shows driver was off duty the entire day however, driver's trip sheet shows that driver performed a trip from Cabazon, CA to Aurora, CO.

TABLE 1: VIOLATIONS DISCOVERED DURING REVIEW/INSPECTION

NUMBER	VIOLATION	IDENTIFYING INFORMATION: DRIVER EQUIPMENT COMMODITY	DATE OF VIOLATION
1	49 CFR § 382.301(a)	Driver: Sabel Martinez Equipment: #017 Commodity: General Freight	5/02/07
2	49 CFR § 382.301(a)	Driver: Kim Aragon Equipment: #001 Commodity: General Freight	9/19/07
3	49 CFR § 382.301(a)	Driver: Gustavo Garcia Equipment #014 Commodity: General Freight	6/02/07
4	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	8/27/07
5	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	8/28/07
6	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	8/29/07
7	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/04/07
8	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/05/07
9	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/06/07
10	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/07/07
11	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/12/07

12	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/13/07
13	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/14/07
14	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/15/07
15	49 CFR § 395.8(e)	Driver: Gustavo Garcia Equipment #018 Commodity: General Freight	9/16/07

SERVICE LIST

This is to certify that on January 10, 2008, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Fatima Hernandez, President ADLR Transportation Inc 5280 Capella Court Mira Loma, CA 91752 Original
Certified/ Return Receipt Requested

Terry D. Wolf, Division Administrator U.S. Department of Transportation Federal Motor Carrier Safety Administration 1325 J Street, Suite 1540 Sacramento, CA 95814 One Copy Internal Mail

U.S. Department of Transportation Federal Motor Carrier Safety Administration

One Copy Internal Mail

Western Service Center Golden Hills Office Centre 12600 W. Colfax Ave. Suite B-300 Lakewood, CO 80215



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Fatima Hernandez, President ADLR Transportation, Inc 5280 Capella Court Mira Loma, CA 91752 CA-20070716-US1061-NOC USDOT#1318654		3. Service Type #C Certified Mail Express Mail Registered Return Receipt fo Insured Mail C.O.D.	? r Merchandise
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Attachment B

ADLR Transportation, Inc. P.O. Box 310156 Fontana, CA 92331

Office: 909 822-2669 Fax: 909 822-6050

FEB 0.8 2006 FMCSA/SAC

February 5, 2008

Terry D. Wolf, Division Administrator U.S. Department of Transportation Federal Motor Carrier Safety Administration 1325 J. Street, Suite 1540 Sacramento, CA 95814

Certified Mail #7007 1490 0001 7264 2747 Return Receipt Requested

RE: US DOT #1318654

Case # CA-2007-0716-US1061

Dear Mr. Wolf.

In response to the Notice of Claim sent by your office dated January 10, 2008. ADLR Transportation, Inc. would like to contest the violations stating that we were unknowingly violating Federal Motor Carrier regulations on all counts as we are a newly formed corporation that grew very rapidly in a very short time with untrained personnel. We have recently hired Premier Safety Compliance to train all drivers and dispatchers for the company. Please find the attached letter Mr. Erine Galindo of Premier Safety Compliance addressing the violations from the recent audit.

Now that we are aware, ADLR Transportation, Inc. will no longer dispatch/use or allow a driver to drive for the company without first sending them and receiving a negative preemployment drug test. We also will ensure that the background/previous employer review will be completed within 30 days of hire. A proper accident register will be implemented for any and all accidents that may occur no matter how inconsequential.

It is our desire to request a reduction for the civil penalties that were incurred. ADLR Transportation, Inc. is now obtaining the proper training to allow the company to adhere in the future to the all recommended required regulations.

Thank you for your attention regarding this most important matter.

Sincerely,

ADLR Transportation, Inc.

Fatima Hernandez

President

Enclosure

Premier Safety Compliance

January 29, 2008

PO BOX 382. Downey, CA. 90241

(562) 951-8650, fax: (562) 951-8268 http://www.premiersafety.cc RECEIVED
FEE 0 8 2008
FMCSA/SAC

Terry D. Wolf Federal Motor Carrier Safety Administration Golden Hills Office Center 12600 W. Colfax Ave. Suite B-300 Lakewood, Co. 80215

Re: ADLR Transportation Inc.

US DOT # 1318654

Terry Wolf

I am responding to the violations found on the terminal audit report concerning Case # CA-2007-0716-US1061 -ADLR Transportation.

We have been contracted by ADLR to assist in correcting the violations found and to ensure these types of violations do not happen again, and provide a program that will ensure compliance these items along with all other state and federal regulations.

We are presently reviewing all drivers' logs and other items related to the drivers hours of service including but not limited to fuel receipts, trip logs and delivery receipts. As we find items we are counseling each driver individually.

On Feb 16th we are having a training meeting for all drivers detailing the Hours of Service regulations and requirement thereof to stay in compliance with them. Part of this training is ensuring the drivers know with no uncertainty that any willful violation of the hours of service regulations will not be tolerated and the driver may be subject to immediate termination. This safety meeting is the first of a continuing series of meetings to train and work with each driver as a group and individually to ensure compliance with all drivers' requirements, laws and regulations.

Concerning the items found we have removed Mr. Gustavo Garcia from driving and have required him to provide us an explanation in regards to his falsifying and violating the hours of service regulations for the time frame indicated. Any other drivers found to be committing any violation of or falsifying of the hours of service regulations will be, as stated previously, subject to termination.

Driver's Omar Hernandez Tavarez and Aquilino Ponce have been brought in and explained in detail concerning the exceeding of hours of service violations, the need to log each trip correctly and to stay in compliance with the required hours of service regulations, including stopping and getting the proper amount of off-duty hours. They have both been counseled concerning the 11/14 driving/on-duty and the 8 day 70 hours on-duty requirement.

At the time of this letter we have starting a daily check of the drivers DVIR's and are in the process of training each driver as they return from each trip, this is an individual training of and review that they are performing the DVIR as required. Those who refuse or do not perform the DVIR as required are being terminated.

Should there be any other steps we need to bring ADLR Transportation into compliance with the regulations, ADLR has stated they are willing to do what it takes to ensure and safe motor carrier operation. Should there be any other questions or concerns please contact ADLR or myself at my office (562) 951-8650, we will be glad to address these immediately

Rgds Ernie Galindo Premier Safety Compliance



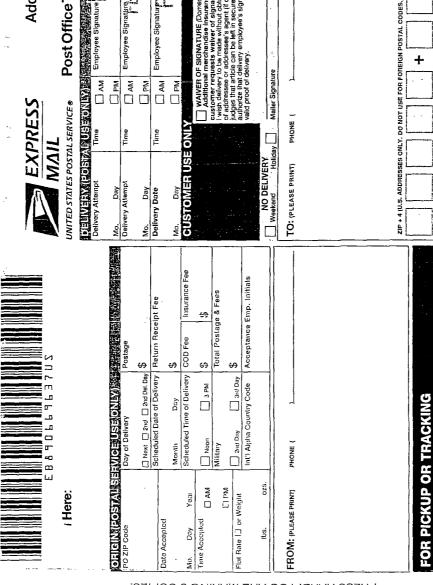
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